

EDMONDS CITY COUNCIL APPROVED MINUTES

June 4, 2013

The Edmonds City Council meeting was called to order at 7:00 p.m. by Mayor Earling in the Council Chambers, 250 5th Avenue North, Edmonds. The meeting was opened with the flag salute.

ELECTED OFFICIALS PRESENT

Dave Earling, Mayor
Lora Petso, Council President
Strom Peterson, Councilmember
Frank Yamamoto, Councilmember
Joan Bloom, Councilmember
Kristiana Johnson, Councilmember
Adrienne Fraley-Monillas, Councilmember
Diane Buckshnis, Councilmember

ALSO PRESENT

Walker Kasinadhuni, Student Representative

STAFF PRESENT

Stephen Clifton, Community Services/Economic
Development Director
Phil Williams, Public Works Director
Rob Chave, Acting Development Services Dir.
Rob English, City Engineer
Leif Bjorback, Building Official
Kernen Lien, Senior Planner
Jen Machuga, Associate Planner
Jeff Taraday, City Attorney
Sandy Chase, City Clerk
Jana Spellman, Senior Executive Council Asst.
Jeannie Dines, Recorder

1. ROLL CALL

City Clerk Sandy Chase called the roll. All elected officials were present.

2. APPROVAL OF AGENDA

Council President Petso relayed the following changes to the agenda:

- Delete Item 6 and reschedule it on July 2
- Move Item 11 to follow the executive session
- Revise Item 14 to include potential litigation

COUNCIL PRESIDENT PETSO MOVED, SECONDED BY COUNCILMEMBER FRALEY-MONILLAS, TO APPROVE THE AGENDA AS AMENDED. MOTION CARRIED UNANIMOUSLY.

3. APPROVAL OF CONSENT AGENDA ITEMS

COUNCIL PRESIDENT PETSO MOVED, SECONDED BY COUNCILMEMBER YAMAMOTO, TO APPROVE THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY. The agenda items approved are as follows:

- A. APPROVAL OF CLAIM CHECKS #202341 THROUGH #202433 DATED MAY 30, 2013 FOR \$144,262.47 (REISSUED CHECK #202368 \$1,250.00).**
- B. APPOINTMENT OF APPLICANTS TO THE EDMONDS CITIZENS' TREE BOARD.**

4. AUDIENCE COMMENTS

Jennifer Martin, Edmonds, requested the Council review the current code with regard to junk vehicles, unused building materials, the size of unpermitted outbuildings, the number of cars allowed on a property including cars parked in the right-of-way adjacent to properties and consider whether the code is

functioning in the best interest of citizens. She provided several photographs illustrating uncovered new and demolished building material in her neighbor's yard in view of her property. There were seven cars, five on the property and two on the side, three of which are not operational; one has the engine in the back of the truck and garbage in the cab. The truck does not meet the junk code because it has been licensed. At least two of the cars were pushed onto the property and one is on a jack. She encouraged the Council to consider revising the code to improve it for the benefit of other citizens and her.

Al Rutledge, Edmonds, thanked everyone who attended the Rotary Waterfront Festival this week and encouraged the public to continue to support events in the city.

Kathie Ledger, Edmonds, resident of Woodway Meadows, speaking on behalf of her husband and herself, asked that the City not remove or allow removal of the fence between the Burnstead development and Woodway Meadows on the south side. Because the property lines are so close, removal of the fence will damage adjacent properties.

Ira Shelton, Edmonds, added to his wife's comments, stating the issue is 4 inches of property on the south side of the development. He found the prospect of losing their fence for the gain of 4 inches for the Burnstead development preposterous. There have been a number of allowances/changes to the Burnstead development and giving them an additional allowance to reduce the size of the buffer by 4 inches should not be a serious issue for the City.

5. CONFIRMATION OF MAYOR'S APPOINTMENT OF ROGER NEUMAIER AS THE FINANCE DIRECTOR.

Mayor Earling presented Roger Neumaier for appointment as Finance Director. He explained the process began with 15 applicants; that number was reduced to 5. Three panels were formed consisting of staff, citizens, and Councilmembers to interview the five candidates; one chose not to be interviewed. Following the interviews, panel members provided their input. He met with the two finalists individually and the Council also interviewed the two finalists.

Mayor Earling explained Mr. Neumaier has been in charge of finances at Snohomish County since 1999. A complete background, credit and reference check was done and Mr. Neumaier's record is stellar.

COUNCILMEMBER FRALEY-MONILLAS MOVED, SECONDED BY COUNCILMEMBER YAMAMOTO, TO CONFIRM THE MAYOR'S APPOINTMENT OF ROGER NEUMAIER AS THE FINANCE DIRECTOR.

Councilmember Bloom explained she will vote against the appointment for two reasons, 1) the code says three candidates should be presented to Council and only two were presented, and 2) although Mayor Earling asked for Council input regarding the decision, her input was not considered because Mayor Earling called on May 16, two days after the Council's interview, to inform the Council of his decision, prior to receiving her input. Mayor Earling responded he received comments from other Councilmembers prior to surveying the Council to ensure he had heard from all Councilmembers.

MOTION CARRIED (6-1), COUNCILMEMBER BLOOM VOTING NO.

Mr. Neumaier said he considered it an honor to be part of the team that provides service to the City. He recognized his #1 responsibility was to be a good listener and he intended to do so. He looked forward to work with the Council and was proud to have been selected to be a member of the City's team.

6. PRESENTATION BY SOUND TRANSIT STAFF

This item was rescheduled to the July 2, 2013 Council meeting.

7. **PUBLIC HEARING: PROPOSED ORDINANCE AUTHORIZING THE ACQUISITION BY NEGOTIATION OR CONDEMNATION OF REAL PROPERTY INTERESTS NEEDED FOR THE 228TH ST. SW CORRIDOR IMPROVEMENTS PROJECT.**

Public Works Director Phil Williams explained the same process was followed for the same reasons on the Five Corners roundabout project. He displayed an aerial of the project, identifying the new section of road to create a new east-west corridor, an enhancement to all modes of transportation. The project also realigns the approaches to the intersection where the left turning movements and high speeds have caused a number of accidents. A center raised median will prevent left turns.

Mr. Williams provided the following project information:

- Total project cost: \$4,841,000
- Total Right-of-Way Phase: \$350,000
- Total Acquisition Cost (approximate): \$230,000
- Funded by Federal grant with a 13.5%
- 9 parcels require acquisition of right-of-way
- 6 parcels are in the ordinance
- 3 parcels have settled

Mr. Williams requested Council approval to acquire via continued negotiations with the property owners and/or condemnation the remaining six parcels and easements. He explained there is no indication condemnation may be necessary; negotiations continue with the property owners to reach a transaction. When acquiring multiple parcels, it is possible one or more may not reach resolution by negotiation. This provides the tool for condemnation in the event it is necessary in order to keep the right-of-way phase on schedule and build the project next year.

Councilmember Peterson referred to Mr. Williams' statement that negotiations have been reached with three unless something happens at the end and asked if he was confident with not including those three in the ordinance. Mr. Williams responded agreement in principle has been reached; the paperwork needs to be prepared and approved. If the negotiations fail on any of those three, staff will return to the Council.

Councilmember Fraley-Monillas asked if the three properties were on the west side of Highway 99. City Engineer Rob English answered 1 of the 3, Shurguard Storage, is on the west side of Highway 99, the second, the Hochberg property, is on the east side and the third is also on the east side at the corner of 228th & 76th.

Mayor Earling opened the public participation portion of the public hearing. There were no members of the audience present who wished to provide testimony and Mayor Earling closed the public participation portion of the public hearing.

COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCILMEMBER FRALEY-MONILLAS, TO APPROVE ORDINANCE NO. 3924, AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AUTHORIZING THE ACQUISITION BY NEGOTIATION OR CONDEMNATION OF REAL PROPERTY INTERESTS NEEDED FOR THE 228th STREET SW CORRIDOR IMPROVEMENTS PROJECT.

Councilmember Fraley-Monillas commented this is a great project, one she has been interested in seeing completed. It is very dangerous to turn left onto 76th southbound on Highway 99 and there have been a number of accidents. Motorists would no longer be able to turn onto 76th from southbound Highway 99, but will be able to turn from 76th onto northbound Highway 99. Mr. Williams agreed the raised median would prevent left turns from southbound Highway 99 onto 76th and onto 76th from northbound Highway 99. Motorists will still be able to access Highway 99 from northbound 76th.

THE VOTE ON THE MOTION CARRIED (6-1), COUNCILMEMBER BLOOM VOTING NO.

8. PUBLIC HEARING AND POTENTIAL ACTION ON THE 2012 INTERNATIONAL BUILDING AND FIRE CODES.

Building Official Leif Bjorback explained every three years the International Building Code (IBC) is updated and republished by the International Code Council. The International Codes are a family of building codes including commercial, residential, fire, plumbing, energy, etc. This family of codes is used in most states, including the State of Washington. The International Codes are adopted at the State level and mandated by RCW 19.27 and adopted and enforced by all jurisdictions within the State. The 2012 International Codes along with State amendments become effective statewide on July 1, 2013.

The proposed revisions to ECDC Title 19 will adopt the 2012 code along with the State amendments. In addition, there are a number of Edmonds specific amendments proposed to the language of the ECDC to eliminate redundancies, delete out-of-date code provisions and simplify the format. Very few substantial changes are being proposed. Aside from actual adoption of the new code, the most substantial proposed change in the ECDC is the deletion of provisions for the Building Board of Appeals which will be replaced by the Hearing Examiner process. The Hearing Examiner process has already been available for use for appeals as an alternate method and it does not seem reasonable to maintain the requirements for a Board of Appeals which has not been needed for more than ten years in the City. Maintaining a volunteer board which is seldom if ever used would be an onerous and cumbersome task. There are other updates within Exhibits 1 and 2, most are considered fairly minor.

Mr. Bjorback relayed staff's recommendation that the City Council direct the City Attorney to prepare an ordinance adopting the 2012 International Building, Fire and Supplemental Codes based on the documents presented. He advised Exhibit 1 contains portions of Title 19 related to the International Building Code and related codes. Exhibit 2 contains the portion regulated by the Fire Marshal related to the fire code, marinas and addressing portions of Title 19.

Fire Marshal John Westfall advised the Fire Code has only minor spelling and text changes. In addition, the Hearing Examiner is recognized as the means of appeal for fire prevention decisions and determinations.

For Councilmember Buckshnis, Mr. Bjorback explained a question was raised at the Parks, Planning and Public Works Committee about whether to require a permit for swings and other playground equipment for commercial, multi-family and parks. He explained the IBC adopted new standards and scoping for recreational facilities with regard to accessibility. Those new standards put an onus on the City to regulate recreational facilities and he removed that from the building permit exemption list.

Councilmember Bloom asked about the history of the Board of Appeals. Mr. Bjorback explained the building code allows each jurisdiction to form a Board of Appeals to hear appeals of decisions of the Building Official as it relates to the building code. He noted that is not to be confused with land use decisions. Those provisions have been in the building code for quite a few years, longer than he has been with the City. The Hearing Examiner is the option that has been used in the last 10+ years and there has not technically been a building code appeal in over ten years. This change is simply catching up the code with current practice.

Councilmember Bloom relayed she heard that a number of developers requested a Board of Appeals because they felt a Board of Appeals would have more specific knowledge related to building codes. Mr. Bjorback explained the language that is being removed regarding the Board of Appeals related to a 9-member board comprised of professional volunteers who have the expertise to hear building code appeals.

A majority of jurisdictions in the State use the Hearing Examiner process because the Board of Appeals is a bit antiquated, cumbersome to maintain and the Hearing Examiner is available.

Councilmember Bloom asked if Mr. Bjorback was aware of a history where developers requested a Board of Appeals. Mr. Bjorback answered not in the five years he has been with the City. Councilmember Bloom commented it would have been before that. Acting Development Services Director Rob Chave answered the Board of Appeals predates the Hearing Examiner throughout the State. A Board of Appeals was the method for hearing appeals in the past; given the difficulty of maintaining a Board of Appeals with little to do, it made more sense to use the Hearing Examiner process. The Hearing Examiner process still allows parties to present evidence, etc. The Hearing Examiner, who deals with quasi-judicial decisions on a regular basis, is better able to deal with decisions versus a Board of Appeals that does not have an understanding of the quasi-judicial process.

Councilmember Bloom asked the last time the City had a functioning Board of Appeals. Mr. Chave answered more than 10 years ago. Councilmember Bloom commented it would be difficult to know whether it would have been used if the City stopped recruiting members. Mr. Chave answered there has always been the ability to appeal; no one has filed an appeal in 10+ years, let alone had a Board of Appeals hear an appeal. The language regarding the Hearing Examiner was included in the building code to provide the City the option of using the Hearing Examiner because when someone approached the City about the possibility of an appeal, it was realized the City did not have a full Board of Appeals. He said it was difficult to recruit members for a Board of Appeals.

Council President Petso observed a change was proposed to the residential seismic standards from D2 to D1 designation. She asked if structures would be safer or were the seismic standards being relaxed. Mr. Bjorback answered for a number of years it was assumed the City was entirely designated D2 which is a more risky seismic zone than D1. A couple of years ago, staff gained new information that the City was in a D1 zone. This change was a clarification and a correction to the designation. Council President Petso asked if a lower hazard zone would make structures less safe. Mr. Bjorback answered the hazard zone identifies the theoretical risk from earthquake damage. Because the City is not in as risky a zone, the standards are slightly less stringent than they would be in D2.

Councilmember Fraley-Monillas asked what information was used to change the zone from D2 to D1. Mr. Bjorback answered there are published maps in the code. For purposes of a project, a licensed engineer showed staff the City was not designated D2 but rather D1.

Councilmember Bloom asked if there were different standards for a documented earthquake liquefaction zone. Mr. Bjorback answered the zone or seismic risk, soils class, wind exposure, etc. are taken into account during engineering design. Councilmember Bloom relayed her understanding that one standard did not apply to everything; there were different standards within the D1 classification depending on the location. Mr. Bjorback answered the seismic zone was one component of the formula for designing structures; other factors such as soils and wind exposure are also considered.

Councilmember Bloom asked the differences in a single family structure in the D2 zone versus D1. Mr. Bjorback answered it happens in degrees that may not be readily apparent. For example, the strength of the lateral design or sheer walls and how strong a wall system is within the house. Stronger sheer walls, more strapping, etc. would be dictated by the engineering design. Councilmember Bloom asked the rationale for making the change. Mr. Bjorback advised it was brought to the City's attention that the City was in the D1 zone; it was previously a mistaken assumption.

Council President Petso asked whether the City had the option to require D2 standards. Mr. Bjorback answered it was not usual but he did not see why not.

Councilmember Fraley-Monillas asked the City Attorney to respond to Council President Petso's question. City Attorney Jeff Taraday answered the City has the option to make local modifications to the State adopted building code. He asked if imposing D2 standards would require additional amendment to the ordinance. Mr. Bjorback answered it was not a difficult language change; it is simply a designation within a table. Mr. Taraday stated he did not have any reason to think the City could not do that.

If the City is in the D1 zone, Councilmember Buckshnis questioned why the designation would remain D2 and whether it was simply to be extra cautious and require higher standards in a development. Mr. Bjorback agreed that would be the reason, more stringent standards to build stronger, safer buildings. He highlighted one difference between the two zones: in D2 skipped sheeting on rooftops is not allowed but is allowed in D1. In a number of re-roof projects where the inspector determines a house has skipped sheeting, the house is required under the D2 zone to have solid sheeting. That has been met with quite a bit of resistance. In that situation in the D1 zone, the skipped sheeting could remain.

Councilmember Buckshnis commented if a property owner was totally paranoid, they could require D2 construction. Mr. Bjorback agreed there was no reason a property owner could not overbuild a structure.

Mayor Earling opened the public participation portion of the public hearing.

Ken Reidy, Edmonds, referred to questions about the history of the Board of Appeals, explaining in 2003 several local builders and developers strongly requested that the Hearing Examiner be removed from the process and they wanted a Board of Appeals. Issues of technical competence with the building code were raised and their concerns were documented in the City Council meeting minutes. That was passed and the Hearing Examiner was removed from the process. Several years passed with very little appeal activity, Ordinance No. 3740 was presented to the City Council under the representation there had been scrivener's errors that left the Hearing Examiner out of the process as the backup when the Board of Appeals could not convene. He summarized there was a time when local builders and developers were strongly opposed to involving the Hearing Examiner in this process. He was instructed by City staff to pursue the Board of Appeals process on a code enforcement appeal; he paid the related \$330 fee and subsequently realized he had been guided incorrectly and pulled his appeal.

Hearing no further comment, Mayor Earling closed the public participation portion of the public hearing.

COUNCILMEMBER FRALEY-MONILLAS MOVED, SECONDED BY COUNCILMEMBER YAMAMOTO, THAT THE CITY COUNCIL DIRECT THE CITY ATTORNEY TO PREPARE AN ORDINANCE ADOPTING THE 2012 INTERNATIONAL BUILDING, FIRE AND SUPPLEMENTAL CODES BASED ON THE DOCUMENTS PRESENTED. MOTION CARRIED UNANIMOUSLY.

9. **PUBLIC HEARING ON THE CITY OF EDMONDS SHORELINE MASTER PROGRAM UPDATE. THE CITY IS REQUIRED BY THE SHORELINE MANAGEMENT ACT (SMA) (RCW 90.58) TO UPDATE ITS SMP IN ORDER TO ENSURE COMPLIANCE WITH THE SMA AND STATE GUIDELINES FOR LOCAL SMPs. THE SMP APPLIES TO SHORELINES WITHIN THE CITY AND ESTABLISHES DEVELOPMENT STANDARDS FOR SHORELINE DEVELOPMENT. THE SHORELINE AREAS WITHIN THE CITY OF EDMONDS JURISDICTION INCLUDE PUGET SOUND, LAKE BALLINGER, AND THE TIDALLY INFLUENCED PORTIONS OF THE EDMONDS MARSH. SHORELINE JURISDICTION ALSO APPLIES TO UPLAND AREAS WITHIN 200 FEET OF THE SHORELINE EDGE (ORDINARY HIGH WATER MARK) AND ASSOCIATED WETLANDS.**

Senior Planner Kernan Lien explained this is the fifth meeting regarding the Shoreline Master Program (SMP) update. He provided an overview of the Shoreline Management Act (SMA):

- Adopted in 1971
- Policies address:

- Shoreline Uses
 - The SMA establishes the concept of preferred uses of shoreline areas. Preferred uses include single family residences, ports, shoreline recreational uses, water dependent industrial and commercial developments and other developments that provide public access opportunities.
- Environmental Protection
 - The SMA is intended to protect shoreline natural resources, including "...the land and its vegetation and wildlife, and the water of the state and their aquatic life..." against adverse effects. All allowed uses are required to mitigate adverse environmental impacts to the maximum extent feasible and preserve the natural character and aesthetics of the shoreline.
- Public Access
 - Master programs must include a public access element making provisions for public access to publicly owned areas, and a recreational element for the preservation and enlargement of recreational opportunities
- Shoreline Master Program
 - Under the SMA, each city and county with "shorelines of the state" must prepare and adopt a SMP that is based on state laws and rules but is tailored to the specific geographic, economic and environmental needs of the community. The local SMP is essentially a shoreline-specific combined comprehensive plan, zoning ordinance, and development permit system.

In 2003 the Department of Ecology (DOE) adopted SMP Guidelines that are contained in WAC 173-26. The SMP Guidelines are state standards which local governments must follow in drafting their SMPs. The Guidelines translate the broad policies of the SMA (RCW 90.58.020) into standards for regulation of shoreline uses. Edmonds did a fairly extensive update of its SMP in 2000; this update brings the SMP into compliance with WAC 173-26.

The SMP is comprised of several documents:

- Shoreline Inventory and Characterization
- Shoreline Restoration Plan
- Development Regulations
 - Draft ECDC Title 24
 - Policies, regulations and standards for shoreline uses and modifications
 - Administrative provisions
- Cumulative Impact Analysis

Mr. Lien described the SMP's relationship to other plans or regulations:

- SMP is adopted element in Edmonds' Comprehensive Plan
- SMP works in tandem with rest of ECDC
 - Uses, developments, and activities must comply with ECDC and SMP
 - SMP prevails where there are conflicts

Mr. Lien explained the SMP applies to shoreline jurisdictions which include:

- All marine waters
- Streams and rivers greater than 20 cfs (none in Edmonds)
- Lakes 20 acres or larger
- Shorelands – upland areas within 200 feet
- Associated wetlands

Mr. Lien explained shoreline environments are established within shoreline jurisdictions. Environmental designations are analogous to zoning designations for areas under SMA jurisdiction. Environmental designations were reviewed by the Technical Advisory Committee that the City formed early in the

process. He identified the location of Edmonds' 11 shoreline environments (Aquatic I and II, Natural Environment, Urban Conservancy, Residential I, II and III, Urban Mixed Use I, II, and III, and Urban Railroad) on an aerial image.

Mr. Lien explained one of the major changes between the current SMP and the updated SMP is the change in designation of the Edmonds Marsh. Under the current SMP, the Edmonds Marsh was considered an associated wetland which meant shoreline jurisdiction ended at the edge of the marsh. In this update, Ecology determined the portion of the Edmonds Marsh that is tidally influenced, the salt marsh area, was itself a shoreline and the shoreline jurisdiction extends 200 feet from the edge of the marsh. He displayed an image identifying the historic boundaries of the Edmonds Marsh and the boundary set for the SMP. With the marsh determined to be a shoreline itself, the shoreline jurisdiction was extended and a new Urban Mixed Use III environment was established for the areas north and south of the marsh. The biggest change with the Urban Mixed Use III environment is it contains a residential element; Urban Mixed Use I and II do not.

Under the current SMP Haines Wharf is an Urban Mixed Use II environment; under the updated SMP it is an aquatic environment. Aquatic is a new environment established in WAC 173-26. The TAC mentioned designating the upland area associated with Haines Wharf as an Urban Mixed Use environment; however there is no upland area associated with Haines Wharf.

Mr. Lien explained another important part of the SMP is Critical Area Ordinance (CAO) integration.

- 24.40.020 – Critical Areas
- GMA vs. SMA
 - SMA rules within shoreline jurisdiction, GMA rules outside of shoreline jurisdiction
- CAO Integration Options
 1. Copy specific sections of CAO into SMP
 2. Reference a specific CAO addition noting which CAO provisions will not apply to the SMP
 3. Include portions of the CAO as an appendix to the SMP
 - City pursued options 2 and 3
- 24.40.020.D – CAO Exceptions
 - General provisions
 - Wetlands
- 24.40.020.C – CAO Provisions allowed with Shoreline variance

Mr. Lien provided information regarding wetlands:

- Lake Ballinger ringed by wetlands
- CAO Buffer (ECDC 23.50.040)
 - Category III = 50 feet
 - Category IV = 35 feet
- SMP wetland buffers (ECDC 24.40.020.F)
 - Category III = 60 feet base (+ 45 to 105 feet)
 - Category IV = 40 feet
- Variance required to reduce buffer more than 25%

Mr. Lien provided information regarding bluff setbacks:

- 50 feet plus 15 feet building setback
- Shoreline variance required to build closer

Mr. Lien displayed an aerial image, identifying setbacks, buffers and shoreline jurisdiction. There has been discussion about what occurs in previously developed areas of the buffer. Staff's intent when drafting the SMP was as long as development occurred within the previously development footprint, it would be an allowed activity. He relayed that some Councilmembers have expressed concern with that.

Mr. Lien explained another change in the updated SMP is in Part VIII: Administration – Shoreline Permits (ECDC 24.80.000 – 24.80.170):

- Administrative Chapter largely based on WAC 173-27
- 24.80.100 – Public Hearing
 - Current SMP requires all shoreline permits to be decided by Hearing Examiner
 - Proposing only significant permits going to Hearing Examiner:
 - One or more persons request a hearing
 - A SEPA Determination of Significance is issued
 - Permit requires shoreline variance or conditional use
 - The project requires a public hearing for other City of Edmonds permits
- 24.80.140 – Time requirements
 - Two years to start project
 - Five years to complete project
 - Under current SMP time requirements do not apply while other permits (local, state, and federal) are being pursued
 - Update gives applicants 5 years to get other required permits, plus a possible 1 year extension

Mr. Lien highlighted Part IV: General Policies and Regulations (ECDC 24.40.000 – 24.40.090)

- 24.40.080 – Shoreline Development Table
 - Allowed uses and required permits
- 24.40.090 – Bulk and Dimensional Standards
 - Setbacks and height limits

Mr. Lien provided the definition of jurisdiction, setbacks, and buffers:

- Jurisdiction – Shorelines and 200 feet from ordinary high water mark (OHWM) of shorelines
- Setback - Minimum distance between a structure or use and the shoreline OHWM
- Buffer - the area adjacent to a critical area and/or shoreline that is required for the continued maintenance, function, and/ or structural stability of the critical area and/or shoreline

Mr. Lien displayed an idealistic drawing of a shoreline, explaining the best available science for streams and wetlands buffers and shoreline areas is done in rural areas where there is still vegetation and wildlife along the shoreline and development is a considerable distance from the shoreline. He displayed an aerial image of the Edmonds shoreline, explaining in reality the shoreline area is developed.

He displayed an aerial image identifying the 200 foot shoreline jurisdiction, 150 foot SMP wetland buffer, 50 foot shore setback and 200 foot CAO wetland buffer. He explained when the updated SMP was drafted consideration was given to no net loss:

- RCW 90.58.620 – Updated SMP's must ensure expansion, redevelopment and replacement of existing structures will result in no net loss of the ecological function of the shoreline over current conditions.
- SMP Handbook – Setbacks only, with vegetation conservation and enhancement with new development meet the requirements to protect ecological functions.

Mayor Earling observed staff recommended the Council solicit comments from the public and consider comments/amendments at a future Council meeting. Mr. Lien answered part of the SMP update process is responding to public comments. He expected lengthy discussion in regard to buffers versus setbacks and noted there is still the issue of the Harbor Square Master Plan and Urban Mixed Use III.

Councilmember Buckshnis advised she recently returned from Anacortes where they have cleaned up their shoreline. She referred to the building at Haines Wharf and asked if the City could require it to be cleaned up before it falls into the water. Mr. Lien answered they have valid shoreline permits. The City

could add it to the Shoreline Restoration Plan as a potential restoration project. It would take a significant amount of funds to remove the structure and restore the area. There is currently nothing the City can require them to do. Councilmember Buckshnis said she was interested in leaving the pilings in the water and removing the structure before it collapsed.

Councilmember Peterson asked if the Building Department had any jurisdiction due to the safety of the structure. He recalled a couple of years ago some swimmers got stuck there. He noted if a building becomes uninhabitable, the Building Department can condemn it and force action. Mr. Lien explained after a storm in 2011, the structure collapsed further. One of the problems with permitting for Haines Wharf is it is a nonconforming structure and the conditions of the permit was it must come into compliance if it was moved at all. Nonconforming structures that are damaged more than 75% must be rebuilt according to code. After the collapse in 2011, the Building Official issued a determination that replacement costs exceeded the 75%. That decision was appealed to the Hearing Examiner and the Hearing Examiner determined in considering the entire development, the wood structure was less than 75% so it still met the nonconforming requirements.

Council President Petso referred to a restoration plan dated 2008 and asked whether any changes had been made to the restoration plan. Mr. Lien answered this SMP update began in 2006. The TAC was formed and reviewed policies and shoreline jurisdictions. A consulting firm drafted the shoreline inventory and characterization and the restoration plan. He picked up that work in late 2009 and spent over a year working with DOE on ECDC Title 24. There have been no changes to the restoration plan since 2008.

Council President Petso referred to transportation facilities of statewide significance, observing transportation facilities would be allowed to expand. She presumed that included the ferry dock. She asked whether the Port was considered a transportation facility of statewide significance. Mr. Lien answered no. Regulations in the transportation section were the same as the current SMP (23.10). He did not provide Council a redline version of 23.10 versus Title 24 because it has been totally reformatted based on State guidelines. The redline version provided to the Council are changes the Planning Board made to the initial draft. Council President Petso inquired about language removed and replaced on page 118 of 159. Mr. Lien answered he would need to review the Planning Board's notes.

Council President Petso recalled the SMP would not allow construction between the marsh and Puget Sound, yet a presentation last week referred to a tide gate. She asked whether the SMP would prevent construction of a tide gate. Mr. Lien answered there should not be a conflict.

Councilmember Bloom referred to protecting and enhancing natural systems on page 15, and said the tide gate would meet that SMP goal. Mr. Lien agreed.

Councilmember Bloom referred to page 14, number 13, and asked if this was the time to tighten the language, such as all use and development should use low impact development (LID) techniques where appropriate and feasible. She suggested using a stronger word such as "must use" and define what was appropriate and feasible. Mr. Lien envisioned changes would be discussed at a future meeting. He referred to page 146, the definition section, that defines must, should, shall and will; shall and will and must are mandatory, may is permissive, should means a particular action is required unless there is a demonstrated compelling reason based on policy of the SMA and SMP against taking action. With regard to LID, the stormwater regulations and stormwater manual spells out when LID is and is not feasible. The SMP works with all other City development regulations and the stormwater regulations address when LID is feasible. He said the use of "must" was not appropriate because there were some instances where LID is not feasible. Councilmember Bloom requested he provide an example when LID is not feasible.

Councilmember Bloom referred to number 11, the City of Edmonds shall stay abreast of scientific information regarding climate change and sea level rise and reevaluate the SMP development standards as

soon as adequate scientific information is available. She asked how that would be instituted. Mr. Lien advised the SMP is updated every 7 years. Much more information will be available for the next update once all the studies regarding the marsh, Shellabarger Creek, Willow Creek and stormwater issues are complete.

Councilmember Buckshnis referred to a Wetland Category table on page 38 that identifies additional buffer width based on habitat points, explaining Anacortes' plan has identified insects, fish, etc. Mr. Lien explained habitat points are part of the wetland delineation process.

Councilmember Buckshnis referred to the second table on page 38 of the SMP and disturbances such as toxic runoff. Mr. Lien explained the two tables are taken directly from DOE Guidance for Small Jurisdictions that DOE requested the City include in its SMP.

Mayor Earling opened the public participation portion of the public hearing.

Eric Laschever, K&L Gates, representing the Port of Edmonds, distributed copies of a letter. He explained the purpose of the letter was to support the staff proposed approach of allowing redevelopment of property within the shoreline buffers. He referred to Mr. Lien's depiction of what would happen if a 150 foot buffer was imposed on already developed property. This issue applied not only to the Port property but other properties with developed buffers. He relayed two reasons for supporting staff's approach, first, from a practical standpoint, drawing a 150 foot line will not improve conditions in the Edmonds Marsh. The buffer concept that works well in intact upland areas does not work once development has occurred. The Port is supportive of improving the condition of the marsh; the buffers will not do that. Second, the shoreline guidelines which were the product of extensive negotiations between the business community, the environmental community, and local governments, make a clear distinction between protection and no net loss. He referred to a Supreme Court case that illustrates that concept in the GMA context, local governments are not required to impose buffers in areas that have already been developed.

Hearing no further comment, Mayor Earling closed the public participation portion of the public hearing.

Councilmember Peterson referred to the Swinomish case and asked if development could be allowed in the expanded setback buffer if it achieved a LEED Gold or Platinum standard. Mr. Lien stated that could be an incentive. The SMP Guidelines and Handbook state a setback itself meets the requirements of the SMA. An incentive could be provided in the SMP to build closer than the base setback such as a LEED standard.

Councilmember Buckshnis commented grandfathering and no net loss is one thing, but redevelopment from a CG zone to an Urban Village is not grandfathering. She understood the concept of no net loss but also understood points are awarded for federal grants for proper setbacks. In terms of grandfathering, she had no problem with no net loss, but an urban village would totally change the footprint. She did not understand no net loss without grandfathering. Mr. Lien explained the Best Available Science Report that was done with the CAO update addressed development within the developed footprint. With regard to grandfathering and no net loss, he considered the paved area of Harbor Square as the developed footprint. Under the contract review for Harbor Square, there is only a 25 foot setback from the Edmonds Marsh. The SMP update proposes a 50 foot setback. Grandfathering and development within the developed footprint is one aspect; redevelopment provides opportunity for enhancement within the 50 foot setback area that may not be provided if a 150 setback is required.

Mr. Taraday responded he had not had an opportunity to research the points made in Mr. Laschever's letter. He agreed in general with the notion that no net loss applies more appropriately to the impact of development occurring on virgin soil than the built out situation at Harbor Square. He was not certain he

agreed that the City was prohibited from imposing larger buffers, notwithstanding the built environment. From a practical standpoint, the reality is if extremely large buffers are imposed in an area that is already developed, the end result will be a perpetuation of the existing use forever because it will be the most economic use of the property. No one will ever want to redevelop as redevelopment will not pencil out because it will result in the loss of currently usable property. It may be more effective to achieve restoration via an incentive program for redevelopment rather than imposing a huge buffer on the property that already includes a great deal of developed landscape.

Councilmember Fraley-Monillas asked if the impervious pavement at Harbor Square represented the footprint. Mr. Lien answered yes, for the most part. He identified areas that are within the setbacks and buffers on an aerial image. For Councilmember Fraley-Monillas, Mr. Lien clarified the current footprint is all the impervious surface.

Councilmember Johnson asked about the sequencing of the Comprehensive Plan update and the SMP as it relates to options for Harbor Square redevelopment. Mr. Lien answered there are two important issues with regard to how the SMP update relates to Harbor Square, 1) the buffer setback area, and 2) the Urban Mixed Use III environment. One of the reasons the Urban Mixed Use III environment was proposed rather than one of the existing Mixed Use environments was the Port's consideration of residential development. It also addresses 4-5 other office/residential parcels north of Main Street. As the City considers moving forward with the Harbor Square Master Plan and has to move forward with the SMP, the biggest issue is residential development and whether to allow it long term on this site. The City must act on the SMP this year; Harbor Square may take longer.

Mayor Earling summarized further discussion will be scheduled on a future agenda.

10. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON IN STRONG SUPPORT OF A 2013 TRANSPORTATION INVESTMENT PACKAGE.

Public Works Director Phil Williams explained topics for the State special legislative session include balancing the operating budget and a statewide transportation funding package that will provide additional funding opportunities for the State, WSDOT and local governments. The package is evolving; there are currently a number of projects that would directly and indirectly benefit Edmonds. There are two specific capital projects for which bonding would be issued, 1) \$700,000 for a walkway on Sunset Avenue, and 2) \$10 million to begin the plan and fund the first phase of access, safety, and mobility improvements on Highway 99. Another key feature of the transportation package is a proposed increase in the State gas tax of \$0.10 over a 4 year period, \$0.05 the first year, \$0.02 the second and third years, and \$0.01 the fourth year. This would provide a substantial amount of funding for State and local projects. Edmonds would receive an additional approximately \$140,000; the City currently receives approximately \$900,000 from the State gas tax.

Councilmember Buckshnis inquired about BNSF with regard to the Sunset project. Mr. Williams answered he had not given up hope of additional help from BNSF as the project proceeds into detailed design. If nothing changes the walkway can be built within the existing footprint of Sunset Avenue.

COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCILMEMBER PETERSON, TO APPROVE RESOLUTION 1291, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, IN STRONG SUPPORT OF A 2013 TRANSPORTATION INVESTMENT PACKAGE.

Councilmember Fraley-Monillas commented this has been a long time coming, particularly for Highway 99. She observed there were limited sidewalks on Highway 99 and asked if the proposed project would include sidewalks. Mr. Williams answered the intent would be to include pedestrian and bicycle amenities and bring the existing amenities up to ADA standards as well as solve numerous safety problems that

exist on the corridor. It would be a huge and long project; this would be just the first phase. Councilmember Fraley-Monillas commented the first step is the right step for Edmonds.

THE VOTE ON THE MOTION CARRIED UNANIMOUSLY.

12. MAYOR'S COMMENTS

Mayor Earling reported flower baskets are being put up downtown. Next, he thanked the Council for confirming his appointment of Roger Neumaier as Finance Director and for approving the resolution in support of a 2013 Transportation Investment Package.

13. COUNCIL COMMENTS

Councilmember Johnson reported the Rotary Waterfront Festival was a great community event. For the first time there was food recycling thanks to the work of Corrine Rubenkönig, the Waste Warriors and the City's Recycling Coordinator Steve Fisher. She noted John Rubenkönig has been involved in recycling with the boy scouts for ten years.

Councilmember Buckshnis thanked the Port of Edmonds and the boaters for allowing the Rotary to use the area for the Waterfront Festival. She thanked the citizens who contacted her and encouraged them to contact all Councilmembers.

Councilmember Peterson expressed appreciation for the appointment of Roger Neumaier as the City's Finance Director. He looked forward to working with him, noting he brings an incredible wealth of experience. He thanked Ron Cone for serving as the City's Interim Finance Director. He also congratulated Snohomish County Executive Lovick on his appointment. He looked forward to new direction at Snohomish County and to working with Executive Lovick and the County Council on issues facing Edmonds.

Council President Petso reported pursuant to Council direction she arranged a small meeting with Councilmembers Peterson and Fraley-Monillas, Port Commissioners Faires and Orvis, and Planning Board Member Phil Lovell. They had a lively discussion seeking commonality regarding the Harbor Square Master Plan and how to move ahead. There was not a lot of commonality and she planned to contact Councilmembers to discuss how to address the Harbor Square Master Plan issue in the future. She thanked the Councilmembers, Port Commissioners and Planning Board Member for their participation and opinions.

Councilmember Yamamoto welcomed Roger Neumaier as Finance Director. He looked forward to working with him as the Chair of the Finance Committee.

Councilmember Fraley-Monillas reported she was at the Waterfront Festival much of Friday. She thanked the Edmonds Police and Fire District 1 for their efforts to keep everyone calm and safe. She congratulated County Executive Lovick on his appointment and wished him the best.

14. CONVENE IN EXECUTIVE SESSION REGARDING A REAL ESTATE MATTER PER RCW 42.30.110(1)(c), AND PENDING AND POTENTIAL LITIGATION PER RCW 42.30.110(1)(i).

At 8:51 p.m., Mayor Earling announced that the City Council would meet in executive session regarding a real estate matter per RCW 42.30.110(1)(c) and pending and potential litigation per RCW 42.30.110(1)(i). He stated that the executive session was scheduled to last approximately 10 minutes and would be held in the Jury Meeting Room, located in the Public Safety Complex. Elected officials present at the executive session were: Mayor Earling, and Councilmembers Yamamoto, Johnson, Fraley-

Monillas, Buckshnis, Peterson, Petso and Bloom. Others present were City Attorney Jeff Taraday and City Clerk Sandy Chase. The executive session concluded at 9:01 p.m.

15. RECONVENE IN OPEN SESSION. POTENTIAL ACTION AS A RESULT OF MEETING IN EXECUTIVE SESSION

Mayor Earling reconvened the regular City Council meeting at 9:02 p.m. No action was taken as a result of meeting in executive session.

11. ORDINANCE AMENDING THE EDMONDS COMMUNITY DEVELOPMENT CODE REGARDING THE TIME LIMIT FOR PRELIMINARY SUBDIVISION APPROVAL

Associate Planner Jen Machuga explained on May 21 an ordinance to increase the timeframe for short plat preliminary approval and to formalize State law regarding formal subdivisions was pulled from the Consent Agenda for further Council discussion.

Councilmember Bloom thanked Ms. Machuga for providing a list of expired short plats that would be extended if this ordinance is approved. She asked about parties of record for those short plats. Ms. Machuga answered she counted the number of letters received for each short plat but did not review the letters' content. Councilmember Bloom asked how many of the 17 short plats had parties of record that provided information. Ms. Machuga answered of the 13 short plats that were not replaced by another more recent subdivision application, 4 had no comments, 5 had 1 comment letter, 1 had 2 comment letters, 1 had 5 comment letters and 2 had 6 comment letters. She summarized comments were submitted for 9 of the 13 short plats.

Main Motion

COUNCILMEMBER PETERSON MOVED, SECONDED BY COUNCILMEMBER YAMAMOTO, TO APPROVE ORDINANCE NO. 3925, AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING SECTION 20.75.100 OF THE EDMONDS COMMUNITY DEVELOPMENT CODE RELATING TO THE TIME LIMIT FOR PRELIMINARY SUBDIVISION APPROVAL AND ESTABLISHING SECTION 20.75.107 RELATING TO AN EXTENSION TO THE TIME LIMIT FOR CERTAIN SHORT PLATS.

Amendment #1

COUNCILMEMBER BLOOM MOVED, SECONDED BY COUNCIL PRESIDENT PETSO, TO AMEND THE MOTION TO REMOVE THE EXTENSION OF EXPIRED SHORT PLATS.

Councilmember Buckshnis asked the purpose of removing the extension of expired short plats. Ms. Machuga answered the ordinance includes the extension; it was the Council's choice to remove it. Councilmember Bloom pointed out staff research found 9 of the 13 short plats that would be extended had comments from citizens. She recalled staff's indication at the last meeting that there was no funding to notice citizens who provided comment. She felt it inappropriate to allow short plats that have expired to be reopened without reopening comments and the entire process.

Councilmember Buckshnis observed the short plats would only be reopened for two years. Ms. Machuga relayed her understanding of the amendment would be to extend currently valid short plats two years from the date of their original application and any that already exceeded five years would remain expired. Councilmember Buckshnis asked if under the current staff proposal, expired short plats would be reopened for two years. Ms. Machuga agreed they would be reopened for two years from the date of the ordinance.

Councilmember Fraley-Monillas asked if there were any negatives to removing the extension of expired plats. Ms. Machuga answered the majority of those caught in the economic downturn were short plats that

expired in the last year or two; thirteen of them have not resubmitted. Without the proposed extension, they would be required to begin the process from the beginning.

Councilmember Fraley-Monillas observed all of the expired short plats could have resubmitted. Ms. Machuga agreed. Councilmember Fraley-Monillas asked what would be entailed for them to resubmit. Ms. Machuga answered a new preliminary application fee is approximately \$1500, civil review is \$1000, and they would be subject to current stormwater codes which could have additional costs. She recalled concerns were raised regarding that issue during the hearing.

Councilmember Fraley-Monillas asked whether an applicant would be required to resubmit if they now wanted to change their short plat. Ms. Machuga answered the code allows for minor change to a short plat that has received preliminary approval. Minor changes include slightly shifting property lines. A major change would be a change to the number of lots, access, etc. and would require the short plat to go through the entire process again regardless of whether it was extended.

Councilmember Fraley-Monillas referred to a citizen who has spoken to the Council several times about property she purchased. Ms. Machuga advised it is a three lot townhouse short plat. She clarified the citizen does not own the property; she is interested in working for someone purchasing the property. That short plat will expire in July. If the Council approves the extension of currently valid short plats before that short plat expires, they would have another two years. If the short plat expired in the meantime and the amendment to remove the extension of expired short plats was approved, they would be required to resubmit.

Acting Development Services Director Rob Chave recalled in previous discussions the concern was the economic downturn. He explained most of the short plats that failed expired during the last few years. Extending short plats in the future is one thing; it did not make sense to do that when things are improving and not address the short plats that were the victims of the economic downturn. He suggested noticing the parties of record of the short plats that would be extended. That represents a small number of people and the cost could be accommodated. However, the cost of noticing property owners within 300 feet could be a significant amount.

Councilmember Peterson advised he will vote against the amendment, noting the short plats were previously approved and the concerns of any parties of record have been addressed. The economic downturn is an extenuating circumstance and had catastrophic impacts on the real estate and development market. This small step will provide an opportunity for the 13 short plats that expired to move forward if they choose. He reiterated the plats were previously approved and any citizen concerns were addressed.

Council President Petso expressed support for the amendment. The cost to resubmit is minimal and it would put them under the new stormwater codes which she assumed were superior to the prior stormwater codes and would provide further public benefit.

Councilmember Fraley-Monillas said she will vote against the amendment. She recalled the Council requested staff pursue this based on citizen comments, citizens begging the Council to extend plats. She was comfortable with moving forward as long as notice was provided to parties of record. She expressed concern that the Council asked for the change and then when staff presents the change, the Council no longer wants it.

Councilmember Bloom clarified it was not citizens who brought this to the Council, it was one person who owns property in Edmonds but is not a resident of Edmonds. That person was not asking for expired plats to be resurrected. Councilmember Bloom explained she did not oppose the extension of existing plats but did oppose the resurrection of expired plats. She noted in addition to stormwater regulations, other regulations may have also changed since those plats expired. The plats that are resurrected will be

subject to the regulations in place when they originally applied; she was concerned there may be other regulations that are now superior that they would not be required to honor, perhaps with the potential of lawsuits. She summarized there was a difference between extending existing plats and allowing resurrection of old plats. She encouraged Councilmember Fraley-Monillas to rethink her position.

Vote on Amendment #1

UPON ROLL CALL, THE AMENDMENT FAILED (3-4), COUNCILMEMBERS JOHNSON AND BLOOM AND COUNCIL PRESIDENT PETSO VOTING YES; AND COUNCILMEMBERS YAMAMOTO, BUCKSHNIS, PETERSON AND FRALEY-MONILLAS VOTING NO.

Amendment #2

COUNCILMEMBER FRALEY-MONILLAS MOVED, SECONDED BY COUNCIL PRESIDENT PETSO, TO AMEND THE MOTION TO INDICATE THAT PROPER ADVANCE NOTICE BE GIVEN TO ALL THE PARTIES OF RECORD FROM ALL THE DIFFERENT PLATS THAT ARE AFFECTED.

Ms. Machuga asked for clarification that the amendment was to provide notice to parties of record of plats that had previously expired, not plats that are currently valid. Councilmember Fraley-Monillas agreed that was her intent.

City Attorney Jeff Taraday pointed out in almost every instance where notice is given on a land use matter, notice is given for the purpose of soliciting comment on an application. In this instance, without further amendment, it will simply be notice of an automatic extension. The language in the code states: shall have their preliminary approvals automatically extended for a period of two years.

Vote on Amendment #2

MOTION CARRIED (6-1), COUNCILMEMBER BUCKSHNIS VOTING NO.

Vote on Main Motion

UPON ROLL CALL, MAIN MOTION AS AMENDED CARRIED (5-2), COUNCILMEMBERS BUCKSHNIS, PETERSON, JOHNSON, FRALEY-MONILLAS, AND YAMAMOTO VOTING YES; AND COUNCILMEMBER BLOOM AND COUNCIL PRESIDENT PETSO VOTING NO.

16. ADJOURN

With no further business, the Council meeting was adjourned at 9:24 p.m.